

G. Ceve et al.
SERIAL NO.: 10/037,480
Page 2 of 4

REMARKS

Applicant wishes to thank the Examiner for the courtesy of a telephone discussion conducted on June 13, 2006 with Applicant's representatives. During the interview, the double patenting rejections were discussed.

Double Patenting Rejection

The Office indicates that Applicants' reply filed on 3/20/06 is not fully responsive to the prior Office Action because

applicant does not fully responded to the provisional 'double patenting rejection' (35 U.S.C. 101), a response to this rejection requires cancellation or amendment to the conflicting claims so that they no longer correspond in scope with the claims in the copending application.

Provisional Statutory Double Patenting Rejection

In the prior Office action, 103-106 were provisionally rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 111-114 of copending Application No. 10/984,450 (filing date of November 8, 2004), which is Applicants' copending application.

As set forth in MPEP §804, with respect to statutory double patenting rejections (35 U.S.C. §101):

If a "provisional" statutory double patenting rejection is the only rejection remaining in one of the applications (but not both), the examiner should withdraw the rejection in that application and permit that application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application into a double patenting rejection when the application issues as a patent.

Applicant respectfully submits that the claims (that will be pending upon entry of the amendments presented herein) are in condition for allowance, but for the instant double patenting rejection. Thus, the provisional rejection should be withdrawn and the present application

G. Ceve et al.
SERIAL NO.: 10/037,480
Page 3 of 4

should issue as a patent, thereby converting the "provisional" double patenting rejection in Application No. 10/984,450 into a double patenting rejection.

Applicant respectfully submits that upon a finding by the Office that the present claims or the claims in Applicants' copending Application No. 10/984,450 are allowable, but for the provisional double patenting rejection, Applicants respectfully submit the conflicting claims will be cancelled as required. In other words, upon a finding that the claims in the present application are allowable but for the double patenting rejection, Applicant will cancel claims 111-114 of copending Application No. 10/984,450. In the alternative, upon a finding that the claims of copending Application No. 10/984,450 are allowable but for the double patenting rejection, Applicant will cancel claims 103-106 of the present application.

Provisional Nonstatutory Obviousness-Type Double Patenting

Claims 3, 4, 6-8, 35-41, 60-61, 66-69, 107-121 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting in view of claims 103-301 of copending Application No. 10/984,450 (filing date of November 8, 2004).

As set forth in MPEP §804, with respect to nonstatutory obviousness-type double patenting rejections:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

Applicant respectfully submits that the claims (that will be pending upon entry of the amendments presented herein) are in condition for allowance, but for the instant double patenting rejection. The present application is the earlier-filed application in this case. Thus, the provisional nonstatutory obviousness-type double patenting rejection should be withdrawn in the

G. Cevc et al.
SERIAL NO.: 10/037,480
Page 4 of 4

present application and the present application should proceed to issue as a patent without a terminal disclaimer.

CONCLUSION

It is respectfully submitted that the subject application is in a condition for allowance. Early and favorable action is requested.

If for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, the Commissioner is hereby authorized and requested to charge Deposit Account No. 04-1105.

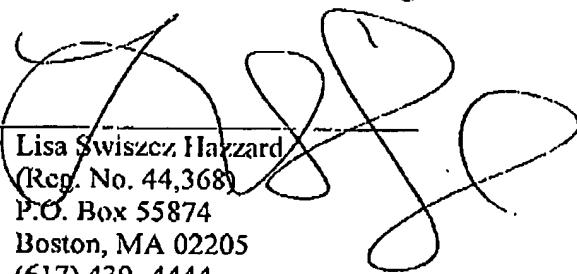
Respectfully submitted,

Edwards Angell Palmer & Dodge LLP

Date: June 28, 2006

By:

Lisa Swiszcz Hazzard
(Reg. No. 44,368)
P.O. Box 55874
Boston, MA 02205
(617) 439-4444



Customer No. 21,874